

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of SCOTT ALPER and PEACE CORPS,  
Uruguay

*Docket No. 01-1944; Submitted on the Record;  
Issued April 23, 2002*

---

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether appellant sustained a recurrence of disability on February 4, 1999, causally related to his February 1, 1996 accepted employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing as untimely.

On April 7, 1997 appellant, then a 29-year-old Peace Corps volunteer, filed a notice of occupational disease claiming that he suffered from a persistent cough, a heavy feeling in his lungs and esophagus, wheezing and had problems swallowing his food, all due to factors of his federal employment. The Office accepted appellant's claim for "small hiatal herna (sic) with moderate gastritis duodenitis and chronic inflammatory infiltrate (sic) with eosinophils." The accepted claim was subsequently expanded to include nonspecific motility disorder. Appellant underwent several surgery procedures, one of which was on February 4, 1999.

In August 1998, appellant returned to work at a different federal agency. On December 2, 1999 he filed a claim for a recurrence of disability (Form CA-2a) occurring on February 4, 1999, the date of his surgical procedure. Appellant claimed that he was not able to perform all the physical tasks ordered by management when he returned to work at the new agency and that the work duties aggravated his physical condition. Appellant submitted a November 24, 1999 attending physician's report from Dr. Don Soeken, a psychologist, diagnosing him with depression. In a report dated November 23, 1999, Dr. Soeken stated that as a result of his reflux disease and surgeries, appellant developed depression and anxiety and was unable to perform his duties. Appellant also claimed that he was being harassed and discriminated against by his supervisors for whistleblowing.<sup>1</sup>

---

<sup>1</sup> Appellant was eventually discharged from his position at the Department of Commerce.

By letters dated March 17, June 12 and July 19, 2000, the Office informed appellant that his claimed recurrence was a new injury since he alleged new work factors and worked for a different federal agency.

By decision dated February 7, 2001, the Office denied appellant's claim for recurrence stating that this was a new injury and appellant needed to file a new claim for occupational disease (Form CA-2).

By letter dated April 9, 2001, appellant requested an oral hearing, claiming that he never received the Office's February 7, 2001 decision. By decision dated June 7, 2001, the Office denied appellant's request for an oral hearing as untimely.

The Board finds that appellant did not establish that he sustained a recurrence of disability on February 4, 1999, causally related to his accepted employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disabilities for which he claims compensation are causally related to the accepted injury.<sup>2</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>3</sup>

The definition of a recurrence of disability as set forth in the Office's procedure manual is a spontaneous return of a condition requiring treatment or causing disability without any intervening work factors or incidents being involved.<sup>4</sup>

In this case, the Office accepted that appellant developed a throat reflux disorder in the performance of duty as a Peace Corps volunteer in Uruguay. When appellant filed his claim for recurrence, he was newly employed with the Department of Commerce and alleged new and completely different work factors attributing to his condition. He stated that he suffered from stress, depression, anxiety and harassment and discrimination when he returned to the new federal agency following his February 4, 1999 surgery. These factors and incidents alleged by appellant are new work factors not previously considered by the Office and amount to a new injury. His condition was not a spontaneous return of his exact previous physical condition and are actually akin to an emotional condition. As appellant's recurrence claim contains new work factors at a new agency, the claim is viewed as a new injury and appellant must file a new occupational disease claim. The Board finds that the Office correctly denied appellant's claim for recurrence of disability and determined that appellant must file a new claim for the incidents which occurred at the Department of Commerce.

---

<sup>2</sup> *Jose Hernandez*, 47 ECAB 288 (1996).

<sup>3</sup> *Id.*

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (January 1995).

The Board also finds that appellant's April 9, 2001 request for an oral hearing was untimely.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu, thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.<sup>5</sup> The Office has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>6</sup> In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.<sup>7</sup>

Appellant's request for an oral hearing was dated April 9, 2001 and received by the Office on April 12, 2001, which is more than 30 days after the Office's February 7, 2001 decision. As such, appellant is not entitled to an oral hearing as a matter of right. Appellant contends that he never received the Office's February 7, 2001 decision. Under the mailbox rule, in the absence of evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have arrived at the mailing address in due course.<sup>8</sup> The Office's February 7, 2001 decision was addressed to appellant at 2500 Parkview Drive, No. 2003, Hallandale, FL, 33009, appellant's address of record at that time and is therefore presumed to have arrived in due course.

Although the Office properly found appellant's hearing request to be untimely filed, the Office considered the matter in relation to the issue involved and correctly advised appellant that he could pursue his claim through the reconsideration process. As appellant had the opportunity to pursue his claim by submitting to the appropriate regional Office new and relevant evidence along with a request for reconsideration, the Board finds that the Office did not abuse its discretion in denying appellant's request for a hearing.<sup>9</sup>

---

<sup>5</sup> 20 C.F.R. § 10.616(a) (1999).

<sup>6</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>7</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>8</sup> *Marlon G. Massey*, 49 ECAB 650 (1998).

<sup>9</sup> The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. E.g., *Jeff Micono*, 39 ECAB 617 (1988).

The June 7 and February 7, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
April 23, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member